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## Latest Developments

### Senate Caucus Prepares to Release Climate Strategy

*Posted February 04, 2014, 4:01 P.M. ET*

The Senate climate change caucus formed in part to defend President Barack Obama's plan to limit carbon dioxide emissions from power plants will unveil its strategy next week, Sen. Barbara Boxer (D-Calif.) told Bloomberg BNA today.

Formed last month by Boxer and other Democrats, the now 20-plus members of the Senate Climate Action Task Force will have to defend the Environmental Protection Agency rules on at least two fronts: Senate Minority Leader Mitch McConnell (R-Ky.) plans to use fast-track procedures under the Congressional Review Act to roll back the EPA rules, and Sen. Joe Manchin (W.Va.) has introduced a bill (S. 1905) to curtail EPA's authority to regulate greenhouse gases.

Boxer said the caucus will meet Feb. 6 to discuss "a couple of actions" they plan to unveil the week of Feb. 10, including a new "action web page" and other tools to rally their defense of the rules and other Obama climate efforts.

### Feinstein, Boxer Preparing Drought Relief Legislation

*Posted February 04, 2014, 3:57 P.M. ET*

Sen. Dianne Feinstein (D-Calif.) told Bloomberg BNA that she and Sen. Barbara Boxer (D-Calif.) are putting the "finishing touches" on their own bill to address the drought in California.

Feinstein said the bill would likely be unveiled Feb. 5, but she declined to provide additional details on the proposal.

The House is scheduled to vote Feb. 5 on the Sacramento-San Joaquin Valley Emergency Water Delivery Act (H.R. 3964), which proponents say would help the state address the water crisis.

Boxer told Bloomberg BNA that H.R. 3964 is a "terrible bill" that "tears our state apart" and called the forthcoming Senate legislation a proposal that would bring people together.

### Senate Passes Farm Bill With Conservation, Energy, Forest Provisions

*Posted February 04, 2014, 3:49 P.M. ET*

On a 68-32 vote, the Senate approved the Agricultural Act of 2014 (H.R. 2642) on Feb. 4 in the form recommended by a House-

Senate conference report.

The vote on the five-year reauthorization of agricultural programs and nutrition assistance followed by one week the House's approval of the legislation. The bill now goes to President Barack Obama, who is expected to sign it.

The bill will end direct payments to farmers while strengthening crop insurance. Federal assistance on premiums for crop insurance will be tied to conservation compliance.

In general, conservation measures fared well in the conference committee, as did provisions for biofuels.

The legislation also will eliminate litigation over the question of National Pollutant Discharge Elimination System permits for logging roads. For the building and maintenance of roads associated with silviculture, no NPDES permits will be needed, it says.

The conference report also protects the authority of the Environmental Protection Agency to limit the spraying of pesticides on or near navigable waters.

The House-Senate conference report on H.R. 2642 is available at <http://www.congress.gov>.

#### [Amicus Briefs Filed in States' Briefs Opport. to Block Chesapeake Restoration Program](#)

*Posted February 04, 2014, 3:41 P.M. ET*

By Jeff Day

The attorneys general of 21 states filed amicus briefs urging the U.S. Court of Appeals for the Third Circuit to rule against the Environmental Protection Agency's mandatory restoration program for the Chesapeake Bay.

The amicus briefs support American Farm Bureau Federation's appeal of a U.S. District Court ruling that the EPA has authority under the Clean Water Act to impose a total maximum daily load and restoration program on the six states that share the Chesapeake Bay Watershed.

The Farm Bureau, National Association of Home Builders and other plaintiffs maintain that the individual states have full authority under the Clean Water Act for selecting and imposing the policies and practices used to achieve the TMDL.

A Farm Bureau attorney told Bloomberg BNA Feb. 4 that amicus briefs were filed by the attorneys general of Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. Only West Virginia is subject to the Chesapeake Bay restoration program.

The Chesapeake Bay Foundation said in a news release defending the restoration program that many of the 21 states fear that if the Chesapeake Bay restoration program works, the EPA will impose restoration programs on other large, multi-state watersheds.

#### [Wyoming Refinery Sues EPA After Denial of Renewable Fuel Exemption Request](#)

*Posted February 04, 2014, 3:26 P.M. ET*

A Wyoming refinery seeking a temporary exemption from the renewable fuel standard blending requirements sued the Environmental Protection Agency after its request was denied ( *Hermes Consol. LLC v. EPA*, D.C. Cir., No. 14-1016, 2/3/14 ).

Hermes Consolidated LLC, doing business as Wyoming Refining Co., had sought a two-year exemption from the renewable fuel standard requirements for its Newcastle, Wyo., facility under a Clean Air Act provision that exempted some small refiners from the blending mandate, according to the petition for review filed Feb. 3 in the U.S. Court of Appeals for the District of Columbia Circuit.

The small refiner exemption expired Dec. 31, 2012, making Wyoming Refining Co. subject to the blending requirements. Clean Air Act Section 211(o)(9)(B) does allow the EPA to exempt small refiners from the blending requirements if compliance would cause "disproportionate economic hardship."

#### [Federal Trustees Say GE Report Misled Public on Hudson PCB Cleanup](#)

*Posted February 04, 2014, 2:08 P.M. ET*



The two federal agencies acting as official natural resource trustees for the Hudson River took the unusual step Feb. 3 of publicly criticizing General Electric Co. for allegedly issuing misinformation on its project to dredge polychlorinated biphenyls from the river and for misleading the public in a recent report.

The National Oceanic and Atmospheric Administration and the Department of the Interior released a letter to GE, saying a recent report from the company “ignores significant natural resource injuries that have already been established by the trustees.”

A press release from the two agencies said the trustees anticipate that GE will be liable for restoring the damaged natural resources.

“At a minimum, surface water, groundwater, fish, and waterfowl are ‘injured’ from the release of GE’s PCBs,” said the letter, which was sent to Ann R. Klee, GE’s vice president of corporate environmental programs. “Further, the trustees are permitted to seek compensation for the lost human uses of those injured resources.”

The letter was a response to a Dec. 27 report from GE that said the company expects to fully resolve its remedial liabilities for cleaning up the Hudson River in 2016 and doesn’t expect to expand its longstanding project to remove PCBs beyond that time. It also said the natural resource damage assessment being undertaken by state and federal agencies is still years away from completion and unlikely to result in significant future liability for the company.

#### Republicans Threaten Legislation to Speed Natural Gas Export Review

*Posted February 04, 2014, 2:00 P.M. ET*

Republican members of the House Energy and Commerce Committee said they may introduce legislation on the approval process for exporting liquefied natural gas to overseas markets if the Energy Department does not pick up the pace of its application reviews.

In the past three years, DOE has acted on only four applications out of more than 20 pending applications to sell LNG to non-free trade agreement countries, Rep. Fred Upton, (R-Mich.), the committee’s chairman, and Rep. Ed Whitfield (R-Ky.), chair of the Energy and Power Subcommittee, said during a briefing with reporters.

“We’d like to think the Department of Energy can make major progress through the balance of the year and if not, then I think we will look at a number of options to try and help them achieve that goal in the future,” Upton said.

#### Two Interior Nominees Offer Reasonances on Their Support for Energy Development

*Posted February 04, 2014, 1:48 P.M. ET*

Two nominees for top posts in the Interior Department fielded questions and prodding from senators Feb. 4 over administration policies on coal, oil, natural gas and endangered species.

Rhea Suh, an Interior policy and budget official nominated to be assistant secretary for fish, wildlife and parks, said she “absolutely” supported the responsible development of natural gas on public lands.

Janice Schneider, a Latham & Watkins LLP environmental attorney, promised that if confirmed to be assistant secretary for land and minerals management, she would work for greater regulatory certainty in offshore energy development, including off the coasts of Alaska.

Royal Dutch Shell Plc recently canceled its offshore Alaska oil exploration plans for 2014 after a federal appeals court ruled Interior’s environmental reviews were inadequate.

#### Preventing Chemical Spills Critical to Provide Safe Tap Water, Senate Panel Told

*Posted February 04, 2014, 1:45 P.M. ET*

Preventing chemical spills near sources of drinking water and taking other measures to protect source water are the most important aspects of providing safe drinking water, a water utility official told a Senate congressional subcommittee today.

“The best thing we can do — and where the greatest focus ought to be placed — is keeping harmful contaminants out of the water altogether,” Brent Fewell, chief environmental compliance officer of United Water, testified before the Environment and

#### Public Works Subcommittee on Water and Wildlife.

The subcommittee held a hearing to examine the safety and security of drinking water supplies following the Jan. 9 leak of thousands of gallons of 4-Methylcyclohexene methanol (MCHM) into the Elk River near Charleston, W. Va. The leak left 300,000 residents temporarily unable to drink tap water or bathe in it.

#### Revised Lithium Battery Final Rule Sent to White House for Review

*Posted February 04, 2014, 1:36 P.M. ET*

The Pipeline and Hazardous Materials Safety Administration has submitted a revised final rule on the transport of lithium batteries to the White House Office of Management and Budget for review, according to OMB's website.

The final rule, submitted Feb. 3, would amend federal regulations on hazardous materials transportation to "comprehensively address" the safe transport of lithium batteries and cells.

Industry groups, including the Rechargeable Battery Association and the Cargo Airline Association, wrote a letter to OMB in January urging a prompt review of the new lithium battery regulations. Those industry groups support the harmonization of federal regulations with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, a set of international regulations.

#### EPA Analysis Shows 12% Annual Drop in National Toxic Releases in 2012

*Posted February 04, 2014, 1:07 P.M. ET*

On-site and off-site toxic substance releases from industrial facilities dropped roughly 12 percent from 2011 to 2012, according to a Toxics Release Inventory (TRI) National Analysis released Feb. 4 by the Environmental Protection Agency.

Total toxic releases to air, water and land dropped about 500 million pounds, from 4.1 billion pounds in 2011 to 3.6 billion pounds in 2012, the analysis said. Metal mining led all industries in the volume of releases, with roughly 1.4 billion pounds of toxic substances released in 2012 from 88 facilities, or roughly 40 percent of all releases reported, according to Bloomberg BNA's December analysis of the 2012 preliminary data set.

There was also a notable decrease in air pollutant releases, which fell 8 percent from 2011 to 2012 largely because of decreased hazardous air pollutant releases including releases of hydrochloric acid and mercury, the EPA's analysis said. Toxic releases to surface water and to land declined 3 percent and 16 percent year-over-year, respectively, according to the EPA analysis.

#### Rep. Shuster Says Will Use Infrastructure Bill as Model for Surface Transportation Bill

*Posted February 04, 2014, 1:04 P.M. ET*

Rep. Bill Shuster (R-Pa.) said Feb. 4 he will use water infrastructure legislation as a model for moving forward on a surface transportation bill.

Shuster, chairman of the House Committee on Transportation and Infrastructure, said one of the key lessons from the Water Resources Development Act (WRDA) was how to make sure stakeholders' concerns are heard.

"I learned a lot about how you bring in stakeholders, you talk to members of Congress, making sure that their concerns are heard," he said during an infrastructure event organized by Bloomberg Government. "We're trying to deploy that same model as we move forward on a surface transportation bill."

WRDA, which would authorize funding for ports, river transportation, dams, flood control and the commerce benefiting from such infrastructure, passed the Senate in May and the House in October. Shuster is part of a House-Senate conference committee working to resolve differences between the two bills.

#### EPA to Issue Revised Procedures on Available Data Compensation

*Posted February 04, 2014, 12:09 P.M. ET*

The Environmental Protection Agency is scheduled to issue Feb. 5 a final rule revising the procedures for the protection of data compensation rights of parties who submit data in support of pesticide registrations.



The final rule will require applicants to submit all data compensation compliance information and materials, including any offers to pay compensation to other parties for use of their data, at the time a registration application is submitted.

The Federal Insecticide, Fungicide and Rodenticide Act allows companies to apply for pesticide registrations based on data owned by others, provided that the data aren't covered by an exclusive-use protection and the applicant offers to compensate the data owner.

Previously, the EPA permitted data compensation compliance documents to be filed after the initial application, but before the agency made its final decision. The American Chemistry Council told the EPA in a 2011 letter filed after the agency issued a proposed rule on data compensation procedures that altering the timing for submitting offers to pay would result in "significant extra paperwork" for pesticide registration applicants and the owners of data.

The final rule also updates the regulatory definition of the term "exclusive use period" to incorporate additional exclusive use criteria established under the Food Quality Protection Act of 1996 (Pub. L. No. 104-170), removes an outdated requirement that applicants use a registration standard for determining which data requirements must be fulfilled for a specific pesticide and adds e-mail as a method of contacting data submitters.

#### [House Panel Hopes to End TSCA After 40 Years, Plans Push to Amend Chemical Safety Law](#)

*Posted February 04, 2014, 11:00 A.M. ET*

A House subcommittee held its last scheduled hearing on the Toxic Substances Control Act Feb. 4. It is now working towards writing legislation to modernize the law passed in 1976 and signed into law by President Gerald Ford, a committee aide told Bloomberg BNA.

In his opening remarks Rep. John Shimkus (R-Ill.), chairman of the House Energy and Commerce Subcommittee on Environment and the Economy, said judicial challenges have frustrated the Environmental Protection Agency's attempts to use its authority under TSCA to obtain information about chemicals in commerce.

"We need to push beyond re-litigating those cases and focus on what authorities EPA has now or could reasonably use in the future to produce tailored, necessary and high-quality tests data and other information to carry out TSCA," Shimkus said.

Rep. Henry Waxman (D-Calif.), ranking member of the full Energy and Commerce Committee, said West Virginia officials had to scramble after the Jan. 9 spill of 4-methylcyclohexane methanol and were unable to obtain meaningful health and safety data. "That disaster illustrated the serious problems of current law," he said.

#### [House Working Group Recommends Less Litigation, More Stakeholder Involvement in Endangered Species](#)

*Posted February 04, 2014, 10:46 A.M. ET*

A House working group said Feb. 4 that Congress should limit litigation and require greater transparency on endangered species protections and policy.

The Endangered Species Act Working Group, formed in May, also recommended that states, tribes, local governments and private landowners have an increased role in endangered species policy and implementation. For instance, these groups should have a seat at the table in closed-door settlements that potentially could affect their lands, the working group said.

Rep. Doc Hastings (R-Wash.) and Rep. Cynthia Lummis (R-Wyo.) chair the 13-member working group, which aims to evaluate the effectiveness of the Endangered Species Act, which has not been updated since 1988.

The group said it will announce "targeted pieces of legislation within the next 30 to 45 days," Hastings told reporters. The group has not identified which of its recommendations will be priorities, he said.

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